

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

A.P.O.T. No. 98 of 2021
IA No:GA/1/2021
Madho Das Mundhra
Versus
Railtel Corporation of India & Anr.

-And-

A.P.O.T. No. 99 of 2021
IA No:GA/1/2021
Madho Das Mundhra
Versus
Railtel Corporation of India & Anr.

BEFORE:

The Hon'ble JUSTICE TAPABRATA CHAKRABORTY

-And-

The Hon'ble JUSTICE SUBHASIS DASGUPTA

Date : 5th August, 2021.

Mr. Suddhasatva Banerjee with Mr. Sourajit Dasgupta,
Mr. Ashis Kr. Mukherjee & Mr. Sourabh Prasad, Advs.
... for Appellant.

Mr. Vikas Baisya with Mr. Ritoban Sarkar, Advs.
... for Respondents

The appeal being APOT No.98 of 2021 has been preferred by the appellant/writ petitioner challenging an order dated 20th October, 2020 passed in a writ petition being WPO No.281/2020. The said writ petition was preferred challenging *inter alia* a tender process initiated by a Notice Inviting Tender (in short, NIT) dated 26th August, 2020. In the same

initially an order was passed on 25th September, 2020 setting aside a reply given by the respondents on 4th September, 2020 to the appellant's application for clarification dated 3rd September, 2020 and directing the respondents to exhaustively reply to the appellant's application for clarification. Pursuant to such direction the respondents replied by a letter dated 7th October, 2020. Aggrieved by the said reply, the appellant preferred an application in which the order dated 20th October, 2020 was passed.

The appeal being APOT No.99 of 2021 has been preferred challenging an order dated 18th June, 2021 passed in the same writ petition on an application preferred by the appellant *inter alia* praying for quashing the opening and evaluation of the financial bids but such prayer was refused.

It appears that there is a delay in preferring the appeal being APOT No.98 of 2021. However, in view of the order passed by the Hon'ble Special Bench of this Court and since we have invited the learned advocates to advance their arguments on merit, the delay stands condoned.

Mr. Banerjee, learned advocate for the appellant in both the appeals argues that the order impugned in the appeal being APOT No.98 of 2021 was passed without considering the observations made in an earlier order passed by a Coordinate Bench on 25th September, 2020. The respondents failed to provide a detailed clarification to the appellant's representation

dated 3rd September, 2020. In spite of noting such infirmity, the learned Judge did not interfere and the order being cryptic in nature is not sustainable.

He submits that the clarification given by the respondents on 7th October, 2020 does not constitute sufficient compliance of the order passed by the Coordinate Bench earlier on 25th September, 2020.

According to him, while passing the order impugned in the appeal being APOT No. 99 of 2021, the learned Single Judge failed to appreciate that the appellant was prevented from submitting any bid since the clarifications sought for were not provided by the respondents.

Mr. Baisya, learned advocate appearing for the respondents submits that the tender pertains to sectional railway traffic management all over India and is a public project. The appellant did not even participate in the said tender process and preferred the writ petition with the sole intent to stall the same. There is no infirmity in the orders impugned in the present appeals and as such no interference is called for, moreso when work orders had already been issued. In support of his argument, Mr. Baisya placed reliance upon a judgment delivered in the case reported in *2020 SCC OnLine Calcutta 2213 (Subir Ghosh vs. The State of West Bengal & Ors.)*.

A perusal of the order dated 20th October, 2020 impugned in the appeal being APOT No.98 of 2021 reveals that the issues agitated by the

appellant were duly considered. Considering the facts of the case, the learned Judge directed the parties to exchange their affidavits and also observed that *‘any decision of the respondent no.2 to finalise the tender in favour of any party shall abide by the result of the writ petition’*.

In view of such protection as conferred by the order dated 20th October, 2020 and since there had been no change in the circumstances, the learned Judge by an order dated 18th June, 2021 rightly did not interfere in the tendering process.

Upon dealing with all the factual issues and considering the arguments as advanced, the learned Single Judge passed reasoned orders refusing the interim reliefs, as prayed for by the appellant, and we do not find any error in the same. The orders impugned in the above appeals also do not suffer from any **patent infirmity** warranting interference.

Accordingly, the appeals being APOT No.98 of 2021 and APOT No.99 of 2021 are dismissed.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(SUBHASIS DASGUPTA, J.)

(TAPABRATA CHAKRABORTY, J.)

